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CIVIL CODE SECTION 56.31 DISCLOSURE OR USE OF MEDICAL INFORMATION

<u>56.31.</u> Notwithstanding any other provision of law, nothing in subdivision (f) of Section 56.30 shall permit the

disclosure or use of medical information regarding whether a patient is infected with or exposed to the human immunodeficiency virus without the prior authorization from the patient unless the patient is an injured worker claiming to be infected with or exposed to the human immunodeficiency virus through an exposure incident arising out of and in the course of employment.

The addition of Section 56.31 to the Civil Code by this act is not intended either to abrogate the holdings in Allison v. Workers' Comp. Appeals Bd. (1999) 72 Cal.App.4th 654, or to prohibit a redaction decision by a workers' compensation judge from being appealed to the Workers' Compensation Appeals Board.

No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California

Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

(Added by Stats. 1999, C. 766 (A.B. 435); Effective January 1, 2000.)

INSURANCE CODE SECTION 1063.1 DEFINITIONS

1063.1. As used in this article:

- (a) "Member insurer" means an insurer required to be a member of the association in accordance with subdivision (a) of Section 1063, except and to the extent that the insurer is participating in an insolvency program adopted by the United States government.
- (b) "Insolvent insurer" means a member insurer against which an order of liquidation or receivership with a finding of insolvency has been entered by a court of competent jurisdiction.
- (c) (1) "Covered claims" means the obligations of an insolvent insurer, including the obligation for unearned premiums, (i) imposed by law and within the coverage of an insurance policy of the insolvent insurer; (ii) which were unpaid by the insolvent insurer; (iii) which are presented as a claim to the liquidator in this state or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings; (iv) which were incurred prior to the date coverage under the policy terminated and prior to, on, or within 30 days after the date the liquidator was appointed; (v) for which the assets of the insolvent insurer are insufficient to discharge in full; (vi) in the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the workers' compensation law of this state; and (vii) in the case of other classes of insurance if the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.
- (2) "Covered claims" also include the obligations assumed by an assuming insurer from a ceding insurer where the assuming insurer subsequently becomes an insolvent insurer if, at the time of the insolvency of the assuming insurer, the ceding insurer is no longer admitted to transact business in this state. Both the assuming insurer and the ceding insurer shall have been member insurers at the time the assumption was made. "Covered claims" under this paragraph shall be required to satisfy the requirements of subparagraphs (i) to (vii), inclusive, of paragraph (1), except for the requirement that the claims be against policies of the insolvent insurer. The association shall have a right to recover any deposit, bond, or other assets that may have been required to be posted by the ceding company to the extent of covered claim payments and shall be subrogated to any rights the policyholders may have against the ceding insurer.
- (3) "Covered claims" does not include obligations arising from the following:
 - (i) Life, annuity, health, or disability insurance.
 - (ii) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks
 - (iii) Fidelity or surety insurance including fidelity or surety bonds, or any other bonding obligations.
 - (iv) Credit insurance.
 - (v) Title insurance.
- (vi) Ocean marine insurance or ocean marine coverage under any insurance policy including claims arising from the following: the Jones Act (46 U.S.C.A. Sec. 688), the Longshore and Harbor Workers' Compensation

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- (33 U.S.C.A. Sec. 901 et seq.), or any other similar federal statutory enactment, or any endorsement or policy
 - affording protection and indemnity coverage.
 - (vii) Any claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses except a special excess workers' compensation policy issued pursuant to paragraph (2) of subdivision (a) (c) of Section 3702.8 of the Labor Code that eover covers all or any part of workers' compensation liabilities of an employer that is issued, or was previously issued, a certificate of consent to self-insure pursuant to subdivision (b) of Section 3700 of the Labor Code.
- (4) "Covered claims" does not include any obligations of the insolvent insurer arising out of any reinsurance contracts, nor any obligations incurred after the expiration date of the insurance policy or after the insurance policy

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has been replaced by the insured or canceled at the insured's request, or after the insurance policy has been canceled by the association as provided in this chapter, or after the insurance policy has been canceled by the liquidator, nor any obligations to any state or to the federal government.

(5) "Covered claims" does not include any obligations to insurers, insurance pools, or underwriting associations, nor their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter.

An insurer, insurance pool, or underwriting association may not maintain, in its own name or in the name of its insured, any claim or legal action against the insured of the insolvent insurer for contribution, indemnity or by way of subrogation, except insofar as, and to the extent only, that the claim exceeds the policy limits of the insolvent insurer's policy. In those claims or legal actions, the insured of the insolvent insurer is entitled to a credit or setoff in the amount of the policy limits of the insolvent insurer's policy, or in the amount of the limits remaining, where those limits have been diminished by the payment of other claims.

- (6) "Covered claims," except in cases involving a claim for workers' compensation benefits or for unearned premiums, does not include any claim in an amount of one hundred dollars (\$100) or less, nor that portion of any claim that is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer.
- (7) "Covered claims" does not include that portion of any claim, other than a claim for workers' compensation benefits, that is in excess of five hundred thousand dollars (\$500,000).
- (8) "Covered claims" does not include any amount awarded as punitive or exemplary damages.
- (9) "Covered claims" does not include (i) any claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured nor (ii) any claim by any person other than the original claimant under the insurance policy in his or her own name, his or her assignee as the person entitled thereto under a premium finance agreement as defined in Section 673 and entered into prior to insolvency, his or her executor, administrator, guardian or other personal representative or trustee in bankruptcy and does not include any claim asserted by an assignee or one claiming by right of subrogation, except as otherwise provided in this chapter.
- (10) "Covered claims" does not include any obligations arising out of the issuance of an insurance policy written by the separate division of the State Compensation Insurance Fund pursuant to Sections 11802 and 11803.
- (11) "Covered claims" does not include any obligations of the insolvent insurer arising from any policy or contract of insurance issued or renewed prior to the insolvent insurer's admission to transact insurance in the State of California.
- (12) "Covered claims" does not include surplus deposits of subscribers as defined in Section 1374.1.
- (d) "Admitted to transact insurance in this state" means an insurer possessing a valid certificate of authority issued by the department.
- (e) "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.
- (f) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or

indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not in fact exist.

- (g) "Claimant" means any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.
- (h) "Ocean marine insurance" includes marine insurance as defined in Section 103, except for inland marine insurance, as well as any other form of insurance, regardless of the name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, which are usually insured against by traditional marine insurance such as hull and machinery, marine builders' risks, and marine protection and indemnity. Those perils and risks insured against include, without limitation, loss, damage, or expense or legal liability of the insured arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death for loss or damage to the property of the insured or another person.
- (i) "Unearned premium" means that portion of a premium that had not been earned because of the cancellation of the insolvent insurer's policy and is that premium remaining for the unexpired term of the insolvent insurer's policy. "Unearned premium" does not include any amount sought as return of a premium under any policy providing retroactive insurance of a known loss or return of a premium under any retrospectively rated policy or a policy subject to a contingent surcharge or any policy in which the final determination of the premium cost is computed after expiration of the policy and is calculated on the basis of actual loss experience during the policy period.

(Amended by Stats. 1999, C. 721 (A.B. 1309); Effective January 1, 2000.)

LABOR CODE SECTION 62.5 WORKERS' COMPENSATION ADMINISTRATION REVOLVING FUND

- 62.5. (a) The Workers' Compensation Administration Revolving Fund is hereby created as a special account in the State Treasury. Money in the fund may be expended by the department, upon appropriation by the Legislature, for the administration of the workers' compensation program set forth in this division and Division 4 (commencing with Section 3200), other than the activities financed pursuant to Section 3702.5, and shall not be used for any other purpose.
- (b) The fund shall consist of assessments made pursuant to this section. Costs of the program shall be shared on a proportional basis between the General Fund and employer assessments. The General Fund appropriation shall account for 80 percent, and employer assessments shall account for 20 percent, of the total costs of the program.
- (c) Assessments shall be levied by the director upon all employers as defined in Section 3300. The total amount of the assessment shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall promulgate reasonable rules and regulations governing the manner of collection of the assessment. The rules shall require the assessment to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the assessment to be paid by insured employers to be expressed as a percentage of premium. In no event shall the assessment paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission.

(Added by Stats. 1999, C. 746 (S.B. 717); Effective January 1, 2000)

LABOR CODE SECTION 139 INDUSTRIAL MEDICAL COUNCIL; COMPOSITION AND DUTIES

- 139. (a) The Industrial Medical Council shall consist of nine <u>11</u> doctors of medicine, at least one of whom shall be a psychiatrist and at least one of whom shall specialize in occupational medicine, two doctors of osteopathic medicine, two doctors of chiropractic, one physical therapist, and one doctor of psychology, <u>one doctor of podiatric medicine</u>, and one acupuncturist, all of whom shall be licensed to practice in this state, and one medical economist. The administrative director shall be an ex officio, nonvoting member of the council, and the medical director appointed pursuant to Section 122 shall serve as executive secretary of the council.
- (b) The Governor shall appoint four <u>six</u> doctors of medicine, two doctors of osteopathic medicine, one doctor of chiropractic, to the council and one medical economist <u>to the council</u>. The Senate Committee on Rules shall appoint three doctors of medicine, one of whom shall be a psychiatrist, and one doctor of chiropractic, <u>and the</u> <u>acupuncturist</u>. The Speaker of the Assembly shall appoint two doctors of medicine, one of whom shall be an occupational medicine specialist, one <u>the</u> physical therapist, and the doctor of psychology, <u>and the doctor of podiatric medicine</u>.

The term of office of members of the council shall be four years, and a member shall hold office until the appointment of a successor. However, the initial terms of three of the doctors of medicine appointed by the Governor shall expire, respectively, on December 31, 1991, December 31, 1992, and December 31, 1993, and the initial terms of the doctors of medicine appointed by the Speaker of the Assembly shall expire, respectively, on December 31, 1991, December 31, 1992, and December 31, 1993. The initial term of one doctor of osteopathic medicine and the doctor of psychology shall both expire on December 31, 1991. Any vacancy shall be filled by the original appointing authority for the unexpired term.

- (c) The nine 11 doctors of medicine and the doctors of osteopathic medicine of the council shall represent medical specialties concerned with the treatment of industrial injury and disease. The doctors of medicine shall be appointed after consultation with the statewide and local associations of the medical profession. The doctors of osteopathic medicine, and psychology, and podiatric medicine shall be appointed after consultation with the statewide associations of the osteopathic medical profession, and psychologists, and podiatric medicine. The doctors of chiropractic shall be appointed after consultation with statewide and local associations of the chiropractic profession.
- (d) Any physician of a type which must be represented pursuant to subdivision (a) may be considered for appointment to the council if the following qualifications are met:
- (1) A physician and surgeon shall be board certified in his or her specialty or, if a doctor of chiropractic, shall be certified in a chiropractic specialty recognized and approved by the California Chiropractic Association, the International Chiropractors Association of California, or the American Chiropractic Association, or if a psychologist, shall be board certified in clinical psychology, or hold a doctoral degree in psychology from an accredited university or professional school and have not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.
- (2) The physician <u>and podiatrist</u> shall be experienced in treating and evaluating industrial injuries and shall maintain an active practice, of which at least one-third of the total practice time is devoted to direct patient treatment.
- (e) Members of the council shall, within the scope of each member's professional training, do all of the following:
- (1) Maintain liaisons with the medical, osteopathic, chiropractic, and psychological, and podiatric professions.
- (2) Counsel and assist the administrative director and perform other duties as the administrative director may request.

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- (3) Assist in recruiting physicians for the medical bureau of the division.
- (4) Assist in developing guidelines for the determination of disputed questions of clinical fact, including guidelines for the range of time normally required to perform a comprehensive medical-legal evaluation, as well as the content of those procedures. The guidelines shall include the range of time normally required for direct patient contact between the physician and the patient in each such procedure.
- (5) Suggest standards for improving care furnished to injured employees.
- (6) Undertake continuing studies of developments in the field of rehabilitation, and continuously inform treating physicians of these developments.
- (7) Recommend reasonable levels of fees for physicians performing services under Division 4 (commencing with Section 3200).
- (8) In coordination with the administrative director, monitor and measure changes in the cost and frequency of the most common medical services, and adopt guidelines for the treatment of common industrial injuries on or before July 1, 1994. The guidelines shall reflect practices as generally accepted by the health care community, and shall apply the current standards of care, including, but not limited to, appropriate and inappropriate diagnostic techniques, treatment modalities, adjustive modalities, length of treatment, and appropriate specialty referrals. On or before July 1, 1994, the administrative director shall adopt model utilization protocols in order to provide utilization review standards. All insurers shall comply with this protocol by July 1, 1995.
- (9) In consultation with the administrative director, promulgate a form which may be used by treating physicians to report on medical issues necessary to determine an employee's compensation.
- (f) The council shall appoint an advisory committee on psychiatric injuries with both psychologists and psychiatrists as members and shall consider the advisory committee's recommendations concerning psychiatric injuries. The council may appoint advisory committees for other specialties as may be necessary to the performance of its duties.
- (g) No action of the council shall be taken unless concurred in by not less than nine members present and voting at a meeting.
- (h) Members of the council shall receive actual, necessary traveling expenses and a per diem allowance of one hundred dollars (\$100) for each day spent in meetings of the council.

(Amended by Stats. 1999, C. 977 (A.B. 1252); effective January 1, 2000)

LABOR SECTION 3212.1 FIREFIGHTERS, PEACE OFFICERS - INJURY INCLUDES CANCER - PRESUMPTION

- 3212.1. In the case <u>of</u> (a) This section applies to active firefighting members, whether volunteers, partly paid, or fully paid, of all of the following fire departments:
- (1) a fire department of eities, counties, eities and counties, districts a city, county, city and county, district, or other
 - public or municipal eorporations <u>corporation</u> or political <u>subdivisions</u>, <u>subdivision</u>, and active firefighting members of the
- (2) a fire departments department of the University of California and the California State University, whether these members are volunteers, partly paid, or fully paid, and in the case of active firefighting members of
- (3) the Department of Forestry and Fire Protection, or of and
- (4) any a county forestry or firefighting department or unit. whether volunteers, partly paid, or fully paid.

<u>This section also applies to</u> peace officers, as defined in Section 830.1 and subdivision (a) of Section 830.2 of the Penal Code, who are primarily engaged in active law enforcement activities, the .

- (b) The term "injury," as used in this division, includes cancer, which including leukemia, that develops or manifests itself during a period while the in which any member described in subdivision (a) is in the service of the department or unit, if the member demonstrate that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director, and that the carcinogen is reasonably linked to the disabling eancer.
- (c) The compensation which that is awarded for cancer shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.
- (d) The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence but unless that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated
- <u>exposure</u> is not reasonably <u>linked</u> to the <u>disabling cancer</u>. <u>Unless</u> so controverted, the appeals board is bound to find in accordance with <u>it the presumption</u>. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.
- (e) The amendments to this section enacted during the 1999-2000 Regular Session shall be applied to claims for benefits filed or pending on or after January 1, 1997, including, but not limited to, claims for benefits filed on or after that date that have previously been denied, or that are being appealed following denial.

(Amended by Stats. 1999, C. 595 (A.B. 539); Effective January 1, 2000)

LABOR CODE SECTION 3700.5 PENALTY FOR FAILURE TO SECURE PAYMENT

3700.5. The failure to secure the payment of compensation as required by this article by one who knew, or because of his or her knowledge or experience should be reasonably expected to have known, of the obligation to secure the payment of compensation, is a misdemeanor <u>punishable by imprisonment in the county jail for up to one year</u>, or by a fine of up to ten thousand dollars (\$10,000), or by both that imprisonment and fine.

No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California

Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

(Amended by Stats. 1999, C. 553 (A.B. 279); Effective January 1, 2000)

LABOR CODE SECTION 3702.8 OBLIGATIONS OF FORMER PRIVATE SELF-INSURED EMPLOYERS

- 3702.8. (a) Private employers <u>Employers</u> who have ceased to be self-insured employers shall discharge their continuing obligations to secure the payment of <u>workers'</u> compensation which that accrued during the period of self-insurance, for purposes of Sections 3700, 3700.5, 3706, and 3715, by compliance <u>and shall comply</u> with all of the following obligations of current certificate holders:
- 1) Filing annual reports as deemed necessary by the director to carry out the requirements of this chapter.
- (2) Depositing In the case of a private employer, depositing and maintaining <u>a</u> security deposit for accrued liability for the payment of any <u>workers'</u> compensation which <u>that</u> may become due, pursuant to subdivision (b) of Section 3700 and Section 3701, except as provided in subdivision (c).
- (3) Paying within 30 days all assessments of which notice is sent, pursuant to subdivision (b) of Section 3745, within 36 months from the last day its the employer's certificate of self-insurance was in effect. Assessments shall be based on the benefits paid by the employer during the last full calendar year of self-insurance on claims incurred during that year.
- (b) In addition to proceedings to establish liabilities and penalties otherwise provided, a failure to comply may be the subject of a proceeding before the director. An appeal from the director's determination shall be taken to the appropriate superior court by petition for writ of mandate.
- (c) Notwithstanding subdivision (a), a private <u>any</u> employer <u>who is currently self-insured or</u> who has ceased to be self-insured may <u>purchase a special excess workers' compensation policy to</u> discharge <u>its-any or all of the employer's</u> continuing obligations as a self-insurer by the purchase of a special excess workers' compensation insurance policy from an insurer authorized to transact workers' compensation insurance in this state. <u>to pay compensation or to secure the payment of compensation</u>.
- (1) The special excess workers' compensation insurance policy shall be issued by an insurer authorized to transact workers' compensation insurance in this state.
- (2) Any <u>Each carrier's</u> special excess workers' compensation policy issued by an insurer shall be approved as to form and substance by the Insurance Commissioner, <u>and rates for special excess workers' compensation</u> insurance shall be subject to the filing requirements set forth in Section 11735 of the Insurance Code.
- (3) Each special excess workers' compensation insurance policy shall be submitted by the employer to the director. The director shall adopt and publish minimum insurer financial rating standards for companies issuing special excess workers' compensation policies.
- (4) Upon acceptance by the director, a special excess workers' compensation policy shall provide coverage for all or any portion of the purchasing employer's claims for compensation arising out of injuries occurring during the period the employer was self-insured in accordance with Sections 3755, 3756, and 3757 of the Labor Code and Sections 11651 and 11654 of the Insurance Code. The director's acceptance shall discharge the Self-Insurer's Security Fund, without recourse or liability to the Self-Insurer's Security Fund, of any continuing liability for the claims covered by the special excess workers' compensation insurance policy.
- (5) For public employers, no security deposit or financial guarantee bond or other security shall be required. The director shall set minimum financial rating standards for insurers issuing special excess workers' compensation policies for public employers.

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- (d) (1) In order for the <u>special excess workers' compensation insurance</u> policy to discharge the full obligations of the <u>a private</u> employer to maintain a security deposit with the director for the payment of self-insured claims, <u>applicable to the period to be covered by the policy</u>, the special excess policy shall provide coverage for all claims for compensation arising out of <u>injuries occurring</u> during the period the private employer was self-insured. <u>that liability</u>. The employer shall maintain the required deposit <u>for the period covered by the policy</u> with the director for a period of three years after the issuance date of the special excess policy. <u>unless the insurer issuing the policy posts a financial guarantee bond for a period of three years in an amount equal to the deposit required by the director. The financial guarantee bond shall be issued by a company authorized to issue these bonds in the state but which is not owned or affiliated with the insurer issuing the special excess workers' compensation insurance policy.</u>
- (2) If the special workers' compensation insurance policy does not provide coverage for all of the continuing obligations for which the private self-insured employer is liable, to the extent the employer's obligations are not covered by the policy a private employer shall maintain the required deposit with the director. In addition, the employer shall maintain with the director the required deposit for the period covered by the policy for a period of three years after the issuance date of the special excess policy.
- (e) The director shall adopt regulations pursuant to Section 3702.10 that are reasonably necessary to implement this section in order to reasonably protect injured workers, employers, the Self-Insurers' Security Fund, and the California Insurance Guarantee Association.
- (f) The posting of a special excess <u>workers' compensation</u> insurance policy with the director shall discharge the obligation of the Self-Insurer's Security Fund pursuant to Section 3744 to pay claims in the event of an insolvency of the <u>a</u> private employer <u>to the extent of coverage of compensation liabilities under the special excess workers' compensation insurance policy</u>. The California Insurance Guarantee Association shall be advised by the director whenever a special excess <u>workers' compensation</u> insurance policy is posted.
- SEC. 8. The provisions of Sections 2, 3, and 5 of this act, the provisions of Title 13.7 (commencing with Section 2870) of Part 4 of Division 3 of the Civil Code, and the provisions of Title 11.65 (commencing with Section 1776) of Part 3 of the Code of Civil Procedure, are severable. If any of those provisions or any of their applications is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(Amended by Stats. 1999, C. 721 (A.B. 1309); Effective January 1, 2000.)

LABOR CODE SECTION 3762 EMPLOYER'S ACCESS TO CLAIM FILE

- 3762. (a) Except as provided in subdivisions (b) and (c), The the insurer shall discuss all elements of the claim file that affect the employer's premium with the employer, and shall supply copies of the documents that affect the premium at the employer's expense during reasonable business hours.
- <u>(b)</u> The right provided by this section shall not extend to any document that the insurer is prohibited from disclosing to the employer under the attorney-client privilege, any other applicable privilege, or statutory prohibition upon disclosure, or under Section 1877.4 of the Insurance Code.
- (c) An insurer, third-party administrator retained by a self-insured employer pursuant to Section 3702.1 to administer the employer's workers' compensation claims, and those employees and agents specified by a self-insured employer to administer the employer's workers' compensation claims, are prohibited from disclosing or causing to be disclosed to an employer, any medical information, as defined in subdivision (b) of Section 56.05 of the Civil Code, about an employee who has filed a workers' compensation claim, except as follows:
- (1) If the diagnosis of the injury for which workers' compensation is claimed would affect the employer's premium, then an insurer may disclose that diagnosis pursuant to subdivision (a).
- (2) Medical information regarding the injury for which workers' compensation is claimed that is necessary for the employer to have in order for the employer to modify the employee's work duties.

The addition of Section 56.31 to the Civil Code by this act is not intended either to abrogate the holdings in Allison v. Workers' Comp. Appeals Bd. (1999) 72 Cal.App.4th 654, or to prohibit a redaction decision by a workers' compensation judge from being appealed to the Workers' Compensation Appeals Board.

No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California

Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

(Amended by Stats. 1999, C. 766 (A.B. 435) Effective January 1, 2000.)

LABOR CODE SECTION 4600.4 AVAILABILITY OF UTILIZATION REVIEW SERVICES/ PRIOR AUTHORIZATION DURING NORMAL BUSINESS DAY

4600.4. (a) A workers' compensation insurer, third-party administrator, or other entity that requires, or pursuant to regulation requires, a treating physician to obtain either utilization review or prior authorization in order to diagnose or treat injuries or diseases compensable under this article, shall ensure the availability of those services from 9 a.m. to 5:30 p.m. Pacific coast time of each normal business day.

(b) For purposes of this section "normal business day" means a business day as defined in Section 9 of the Civil Code.

(Added by Stats. 1999, C. 124, (A.B. 775); Effective January 1, 2000)

LABOR CODE SECTION 4603.2 SELECTION OF PHYSICIAN-NOTICE; PHYSICIAN'S REPORT - PAYMENT FOR MEDICAL TREATMENT

- 4603.2. (a) Upon selecting a physician pursuant to Section 4600, the employee or physician shall forthwith notify the employer of the name and address of the physician. The physician shall submit a report to the employer within five working days from the date of the initial examination and shall submit periodic reports at intervals that may be prescribed by rules and regulations adopted by the administrative director.
- (b) Payment for medical treatment provided or authorized by the treating physician <u>selected by the employee or</u> <u>designated by the employer</u> shall be made by the employer within 60 days after receipt of each separate, itemized billing, together with any required reports. <u>If the billing or a portion thereof is contested, denied, or considered incomplete, the physician shall be notified, in writing, that the billing is contested, denied, or considered incomplete, within 30 working days after receipt of the billing by the employer. A notice that a billing is incomplete shall state all additional information required to make a decision. Any properly documented amount not paid within the 60-day period shall be increased by 10 percent, together with interest at the same rate as judgments in civil actions retroactive to the date of receipt of the bill, unless the employer does both of the following:</u>
 - (1) Pays the uncontested amount within the 60-day period.
 - (2) Advises, in the manner prescribed by the administrative director, the physician, or another provider of the items being contested, the reasons for contesting these items, and the remedies available to the physician or the other provider if he or she disagrees. In the case of a bill which includes charges from a hospital, outpatient surgery center, or independent diagnostic facility, advice that a request has been made for an audit of the bill shall satisfy the requirements of this paragraph. If an employer contests all or part of a billing, any amount determined payable by the appeals board shall carry interest from the date the amount was due until it is paid. An employer's liability to a physician or another provider under this section for delayed payments shall not affect its liability to an employee under Section 5814 or any other provision of this division.
- (c) Any interest or increase in compensation paid by an insurer pursuant to this section shall be treated in the same manner as an increase in compensation under subdivision (d) of Section 4650 for the purposes of any classification of risks and premium rates, and any system of merit rating approved or issued pursuant to Article 2 (commencing with Section 11730) of Chapter 3 of Part 3 of Division 20f the Insurance Code.

(Amended by Stats. 1999, C. 124 (A.B. 775) Effective January 1, 2000)

LABOR CODE SECTION 4850 PAID LEAVE OF ABSENCE FOR SPECIFIED PUBLIC EMPLOYEES

- 4850. (a) Whenever any city policeman police officer, city, county, or district firefighter, sheriff or any officer or employee of a sheriff's office, any inspector, investigator, detective, or personnel with comparable title in any district attorney's office, any county probation officer, group counselor, or juvenile services officer, or any officer or employee of a probation office, any peace officer under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class, or lifeguard employed year round on a regular, full-time basis by a county of the first class, who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city or county, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until such that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.
- (b) This section shall apply only to city policemen police officers, sheriffs or any officer or employee of a sheriff's office, and any inspector, investigator, detective, or personnel with comparable title in any district attorney's office, or any county probation officer, group counselor, or juvenile services officer or any officer, or employee of a probation office, who are members of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) and excludes employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service, and excludes employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service. It also excludes employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service. It shall also apply to city, county, or district firefighters who are members of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) and excludes employees of the city fire department, county fire department, and of any fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service. It shall also apply to deputy sheriffs, and to peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class, who are subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code). It shall also apply to probation officers, group counselors, juvenile service officers, or any officer or employee of a probation office, subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code). It shall also apply to lifeguards employed year round on a regular, full-time basis by ecunties a county of the first class who are subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code).
- (c) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.
- (d) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

(e) This section shall become operative on January 1, 1990.

SEC. 2. The Legislature finds and declares with respect to Section 1 of this Act that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because the work of peace officers under Section 830.31 of the Penal Code who are employed on a regular, full-time basis by a county of the first class require the disability benefits of Section 4850 of the Labor Code.

(Amended by Stats. 1999, C. 270 (A.B. 224) and C. 970 (A.B. 1387); Effective January 1, 2000)

LABOR CODE SECTION 4850.5 BENEFITS FOR FIREFIGHTERS AND SHERIFF'S OFFICE EMPLOYEES IN SAN LUIS OBISPO

4850.5. Any firefighter employed by the County of San Luis Obispo, and the sheriff or any officer or employee of the sheriff's office of the County of San Luis Obispo, and any county probation officer, group counselor, or juvenile services officer, or any officer or employee of a probation office, employed by the County of San Luis Obispo, shall, upon the adoption of a resolution of the board of supervisors so declaring, be entitled to the benefits of this article, if otherwise entitled to these benefits, even though the employee is not a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code).

(Amended by Stats. 1999, C. 970 (A.B. 1387); Effective January 1, 2000)

LABOR CODE SECTION 5406 TIME LIMITS FOR COMMENCEMENT OF BENEFITS COLLECTION PROCEEDINGS; GENERALLY

The Legislature finds and declares as follows:

- (a) An HIV-infected worker may be asymptomatic for as long as 10 years.
- (b) The current statute of limitations restricts the ability of the surviving spouse and other dependents of a worker who is infected with HIV in the workplace to file a workers' compensation claim for death benefits if the worker does not die of the disease within 240 weeks of the date of injury.
- (c) It is the intent of the Legislature to ensure that the dependents of workers whose death is caused by an HIV infection sustained in the workplace will receive the death benefits provided by the Labor Code even though the death may occur more than 240 weeks after the date of the initial injury.
- 5406. Except as provided in Section 5406.5 *or* 5406.6, the period within which may be commenced proceedings for the collection of the benefits provided by Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 is one year from:
- (a) The date of death where death occurs within one year from date of injury; or
- (b) The date of last furnishing of any benefits under Chapter 2 (commencing with Section 4550) of Part 2, where death occurs more than one year from the date of injury; or
- (c) The date of death, where death occurs more than one year after the date of injury and compensation benefits have been furnished. No such proceedings may be commenced more than one year after the date of death, nor more than 240 weeks from the date of injury.

(Amended by Stats. 1999, C. 358 (S.B. 77); Effective January 1, 2000)

(Short Title: This act shall be known and may be cited as the Cliff Ojala Death Benefits Act.)

LABOR CODE SECTION 5406.6 TIME LIMITS FOR COMMENCEMENT OF BENEFITS COLLECTION PROCEEDINGS; HIV

5406.6. (a) In the case of the death of a health care worker, a worker described in Section 3212, or a worker described in Section 830.5 of the Penal Code from an HIV-related disease, the period within which proceedings may be commenced for the collection of benefits provided by Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 is one year from the date of death, providing that one or more of the following events has occurred:

- (1) A report of the injury or exposure was made to the employer or to a governmental agency authorized to administer industrial injury claims, within one year of the date of the injury.
- (2) The worker has complied with the notice provisions of this chapter and the claim has not been finally determined to be noncompensable.
- (3) The employer provided, or was ordered to provide, workers' compensation benefits for the injury prior to the date of death.
- (b) For the purposes of this section, "health care worker" means an employee who has direct contact, in the course of his or her employment, with blood or other bodily fluids contaminated with blood, or with other bodily fluids identified by the Division of Occupational Safety and Health as capable of transmitting HIV, who is either (1) any person who is an employee of a provider of health care, as defined in subdivision (d) of Section 56.05 of the Civil Code, including, but not limited to, a registered nurse, licensed vocational nurse, certified nurse aide, clinical laboratory technologist, dental hygienist, physician, janitor, or housekeeping worker, or (2) an employee who provides direct patient care.

(Added by Stats. 1999, C. 358 (S.B. 77); Effective January 1, 2000)

(Short Title: This act shall be known and may be cited as the Cliff Ojala Death Benefits Act.)